

Appln No. 10/723,817
Amdt date January 8, 2009
Reply to Office action of November 10, 2008

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and allowance are hereby requested.

Claims 1-20, 24 and 25 are now in the application. Claims 21-23 were previously cancelled. Claims 1, 8, 10, 14, 18 and 25 have been amended.

The Examiner has rejected claims 1-13 and 24 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The Applicant has amended claims 1 and 10 to recite, in part (underlining added for emphasis): "A lightweight fence and gate for swimming pools surrounded by a deck having a plurality of sockets" to indicate that the deck is not positively claimed.

Accordingly, claims 1-13 and 24 particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The Examiner has rejected claims 1-8, 10-12, 14-16 and 18-20 under 35 U.S.C. §103(a) as being obvious over Sadinsky et al. (US 5,664,769) in view of Applicant's admitted prior art (APA).

Claim 1 calls for, in part (underlining added for emphasis): "a pin fixedly attached along a top length of the pin to each insert . . . wherein the pin is configured to be removably inserted into one of the plurality of sockets in the deck."

Claim 10 calls for, in part (underlining added for emphasis): "a pin fixedly attached along a top length of the pin to each insert . . . and configured to be removably insertable into one of the plurality of sockets in the deck."

Claim 14 calls for, in part (underlining added for emphasis): "a pin attached along a top length of the pin to each insert . . . the method comprising: removably inserting the bottom end of each pin protruding from each of the plurality of poles into a deck surrounding a swimming pool . . . "

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Claim 18 calls for, in part (underlining added for emphasis): "a pin fixedly attached along a top length of the pin to each insert . . . the cylindrical bottom portion of the pin being configured to be removably insertable into a drilled socket in a pool deck."

The Examiner concedes that Sadinsky fails to disclose a pole with an insert and a pin fixedly attached to each insert. Office action, pp. 4, 8, 9 and 11. The Examiner notes that Applicant's admitted prior art teaches a fence wherein poles include a plastic insert within each pole and a metal pin fixedly attached to each insert. Office action, pp. 5, 8, 10 and 11. Accordingly, the Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky as taught by Applicant's admitted prior art to enable one to use less noticeable, smaller diameter holes in the pool decking. Office action, pp. 5, 8, 10 and 11.

Applicant's specification notes that it is known that steel pins have been mounted in fence poles by placing at least a portion of their length inside the center of a length of plastic pipe. The fence pole, plastic pipe and steel pin would then be held in place by a screw placed through a bore drilled across the fence pole, plastic pipe and steel pin from side to side of the pole. As noted, "attaching the pin to the pole using a cross screw is a difficult process; three components must be held steady during drilling of a cross hole and then placement of the screw to ensure that everything lines up. The resulting attachment is also subject to failure should the cross screw shear during any twisting of the three components relative to one another." Page 2:3-13.

Differentiating from the known poles, Applicant's specification teaches, with reference to FIG. 3a, that the pin may extend and be fixedly attached along a length of each insert, thus eliminating the need to drill a bore through the fence pole, the plastic pipe and the steel pin. The Applicant's specification discloses that, for example, an adhesive may be used to fixedly attach the pin along a length of each insert.

Applicant notes that in the Declaration of Steven E. Sadinsky in Support of Amendment After Decision on Appeal, the Applicant noted that "I found a surprising and unexpected improvement in the structural integrity of the poles using an adhesive at the attachment means as opposed to screws. Particularly, when I used an adhesive as the attachment means and applied a

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large force to the poles, I found that the poles would bend, but not break as when a screw was used as the attachment means." Sadinsky Decl., par. 3 (emphasis added).

The Examiner notes that "Palamarz teaches a pole 58 wherein a pin 5, 56 is attached to the pole by an adhesive 61." Office action, p. 12. Palamarz teaches a post for a railing 26, and as disclosed by Palamarz, "[s]upport posts 25 must be securely fastened to slab 22 so that railings 26 are securely and firmly held in place to prevent persons or objects from accidentally falling off the edges 28 of slabs 22." As such, Palamarz teaches partially filling the hole 38 with a hardenable adhesive material, such as an expandable grout, and then inserting rod 36 into the hole. Palamarz also discloses that rods 54, 56 are held in channels 60, 62 of a post body shell 58 and that adhesive (grout) fills the portion 61 , 63 of the channels. Col. 5:29-38. The expandable grout hardens forming layers 75 of hardened grout which fasten rods 54, 56 to slab 22. Col. 6:5-13. As shown in FIG. 3 of Palamarz and supported by at least the portions of the specification cited above, Palamarz teaches a hardenable grout that fixedly attaches a bottom portion of the rod 54 protruding from the shell 58 within the hole 64. Further, because Palamarz discloses permanently fastening rods 54, 56 to the slab 22 and emphasizes the importance of such fastening, Palamarz teaches away from removably inserting a bottom portion the first and second rods protruding from the shell into the slab.

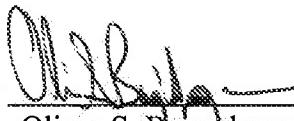
Accordingly, at least the above-cited limitations as claimed in claims 1, 10, 14, and 18 are not an obvious result from a reasonable combination of the teachings of Sadinsky, APA and Palamarz. As such, the invention claimed in claims 1, 10, 14 and 18 is patentable over Sadinsky in view of APA and Palamarz.

Claims 2-9, 11-13, 15-17, 19, 20, 24 and 25 are dependent on claims 1, 10, 14 or 18. As such, these claims allowable based on claims 1, 10, 14 or 18 for at least the reasons above and for the additional limitations they contain.

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In view of the above amendment and remarks, the claims are patentably distinct over the prior art of record and that all of the rejections of the claims have been overcome. As such, allowance of the above Application is requested.

Respectfully submitted,
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